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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,967	09/13/2005	Charlotta All-Ericsson	ON/4-32739A	4092

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CORPORATE INTELLECTUAL PROPERTY
ONE HEALTH PLAZA 104/3
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EXAMINER	
ROYDS, LESLIE A	
ART UNIT	PAPER NUMBER
1614	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/531,967	ALL-ERICSSON ET AL.	
	Examiner	Art Unit	
	Leslie A. Royds	1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9 and 10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9 and 10* is/are rejected.

7)☒ Claim(s) *1 and 2* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *4/20/05 and 3/15/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-7 and 9-10 are presented for examination.

Claim 8 was cancelled pursuant to the Preliminary Amendment of April 20, 2005.

Acknowledgement is made of the present application as a proper National Stage (371) application of PCT Application No. PCT/EP03/11601, filed October 20, 2003, which claims benefit under 35 U.S.C. 119(a-d) to U.K. Patent Application No. 0224455.6, filed October 21, 2002.

Applicant's Information Disclosure Statements (IDS) filed April 20, 2005 (one page) and March 15, 2006 (one page) have each been received and entered into the present application. As reflected by the attached, completed copies of form PTO-1449 (two pages total), the Examiner has considered the cited references.

Objection to the Claims

Claim 1 is objected to for reciting the phrase "administering to said mammal in need of such a treatment, a dose, effective against said disease a Compound I of the following formula", which is grammatically awkward. Applicant may wish to consider amending the claim to now read --- administering to said mammal in need of such a treatment, a dose, effective against said disease of a Compound I of the following formula---.

Claim 2 is objected to for misspelling the word ---metastasizing--- as "metatazing".

Claim Rejection - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9-10 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results

in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 112, First Paragraph, Written Description Requirement

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7 and 9-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Present claim 1 is directed to a method for treating a mammal suffering from uveal melanoma comprising administering to said mammal in need of such a treatment, a dose, effective against said disease, a Compound I of the formula set forth in the claim or a pharmaceutically acceptable salt thereof. Present claim 9 is directed to the use of a c-kit inhibitor or a pharmaceutically acceptable salt thereof for the preparation of a medicament for the treatment of uveal melanoma.

In particular, the specification as originally filed fails to provide adequate written description for (1) the administration of *a* Compound I of the following formula (claim 1) or (2) the genus of c-kit inhibitors (claim 9).

Administration of a Compound I of the Formula Set Forth in Claim 1 (claims 1-7):

Regarding the requirement for adequate written description of chemical entities, Applicant's attention is directed to the MPEP §2163. In particular, *Regents of the University of California v. Eli Lilly & Co.*, 119 F.3d 1559, 1568 (Fed. Cir. 1997), *cert. denied*, 523 U.S. 1089, 118 S. Ct. 1548 (1998), holds

that an adequate written description requires a precise definition, such as by structure, formula, chemical name, or physical properties, "not a mere wish or plan for obtaining the claimed chemical invention." *Eli Lilly*, 119 F.3d at 1566. The Federal Circuit has adopted the standard set forth in the Patent and Trademark Office ("PTO") Guidelines for *Examination of Patent Applications* under the 35 U.S.C. 112.1 "Written Description" Requirement ("*Guidelines*"), 66 Fed. Reg. 1099 (Jan. 5, 2001), which state that the written description requirement can be met by "showing that an invention is complete by disclosure of sufficiently detailed, relevant identifying characteristics," including, *inter alia*, "functional characteristics when coupled with a known or disclosed correlation between function and structure..." *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 296 F.3d 316, 1324-25 (Fed. Cir. 2002) (quoting *Guidelines*, 66 Fed. Reg. at 1106 (emphasis added)). Moreover, although *Eli Lilly* and *Enzo* were decided within the factual context of DNA sequences, this does not preclude extending the reasoning of those cases to chemical structures in general. *Univ. of Rochester v. G.D. Searle & Co.*, 249 Supp. 2d 216, 225 (W.D.N.Y. 2003).

Applicant's present claim 1 reads upon the administration of a therapeutically effective amount of "a Compound I of the following formula" set forth in the claim. The presence of the word "a" broadens the claim to read upon compounds of formula I *per se* or virtually any compound with any correlation, basis or relationship to formula I. In other words, the claim is not limited to only those compounds that are encompassed by formula I, but rather is broadened to read upon the administration of a therapeutically effective amount of any compound that is derived from, analogous to, or is in some way related to formula I.

Applicant discloses the compound 4-(4-methylpiperazin-1-ylmethyl)-N-[4-methyl-3-(4-pyridin-3-yl)pyrimidin-2-ylamino)phenyl]-benzamide of the formula identical to that set forth in present claim 1 at page 1 of the instant specification. Despite this disclosure, however, Applicant has failed to provide any structural characteristics, chemical formula, name(s) or physical properties that would provide adequate written description of the compounds based upon the presently claimed formula I that Applicant was

actually in possession of, and intended to be used within the context of the present invention, at the time of the present invention. Accordingly, such disclosure, while noted, does not provide a teaching of what compounds other than those of formula I *per se* would be considered within the scope of the phrase "a Compound I of the following formula" such that one of ordinary skill in the art would have been able to readily identify the scope of those compounds encompassed by the phrase "a Compound I of the following formula" aside from those explicitly identified in the instant disclosure.

While it may be construed that the fact that the compound is based or derived from formula I implies some sort of chemical or structural characteristic sufficient to fulfill the written description requirement of 35 U.S.C. 112, first paragraph, it is herein noted that Applicant has failed to describe in any certain terms the degree of derivation or structural similarity that a compound may have to the parent formula I and still be considered within the scope of those compounds intended for use by Applicant. The mere fact that the only chemical or structural characteristic of the compound is that it is based upon or derived from formula I, wherein the degree of similarity or derivation from formula I is herein undefined in the accompanying specification, is not sufficient to provide an adequate description of the genus of compounds intended by Applicant for use in the present invention. In the absence of such description, Applicant's limitation to "a Compound I of the following formula" is not sufficiently supported by the present disclosure in such a way as to satisfy the written description requirement of 35 U.S.C. 112, first paragraph.

While it is recognized that adequate written description of a limitation is not required to be stated *in haec verba* in the specification or claims as originally filed, adequate written support for all claim limitations must arise from either an explicit or an implicit suggestion by the disclosure to show that such a concept as now claimed was actually in possession of the Applicant at the time of the invention. For the reasons provided *supra*, Applicant has failed to provide the necessary teachings, by describing the claimed invention with all of its limitations using such descriptive means that fully set forth the claimed

invention, in such a way as to reasonably convey to one skilled in the relevant art that Applicant had possession of the concept of "a Compound I of the following formula".

Regarding c-Kit Inhibitors (Claims 9-10):

MPEP §2163 recites, "The written description requirement for a claimed genus may be satisfied through sufficient description of a representative number of species by actual reduction to practice, reduction to drawings, or by disclosure of relevant identifying characteristics, i.e., structure or other physical and/or chemical properties, by functional characteristics coupled with a known or disclosed correlation between function and structure, or by a combination of such identifying characteristics, sufficient to show the Applicant was in possession of the claimed genus." Please reference *Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1406.

Regarding the limitation of "a c-kit inhibitor" (claim 9), Applicant states at page 2, last paragraph, "The invention thus relates to the use of a c-kit inhibitor or a pharmaceutically acceptable salt thereof as a drug against uveal melanoma. Most preferably, the invention relates in the use of Compound I or a pharmaceutically acceptable salt thereof as a drug against uveal melanoma."

The instant specification provides a non-limiting definition and description of a single species of agent that inhibits c-kit that Applicant states is encompassed by, and useful for, the presently claimed invention. Disclosure of relevant identifying characteristics, such as a structure or other physical or chemical properties, or functional characteristics beyond the generic disclosure of selectively inhibiting the activity of c-kit that would be sufficient to demonstrate that Applicant was in possession of the entire genus of compounds capable of selectively inhibiting c-kit is absent from the specification. Please see *Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1406 and MPEP §2163.

While it is duly noted that the genus of "c-kit inhibitors" is limited to those compounds capable of this function, it remains that Applicant has not appropriately defined the metes and bounds of the genus, even when limited by function (step-plus-function form). MPEP §2163 teaches that step-plus-function

claims are adequately described if "the written description adequately links or associates adequately described particular structure, material, or acts to the function recited in a step-plus-function claim limitation," or if "it is clear based on the facts of the application that one skilled in the art would have known what structure, material, or acts perform the function recited in a step-plus-function limitation." The instant application does not meet these criteria. The present specification provides no disclosure beyond the exemplary c-kit inhibitor, of which only a single species is disclosed, that would provide a means for identifying materials, other than those specifically disclosed by Applicant, that would have been amenable for use in the present invention, nor does it teach the specific structure, physical properties or a method of identification of such compounds that perform the function recited in the claim. Furthermore, it has been held that a wish or plan for obtaining the chemical invention as claimed does not provide adequate written description of a chemical invention. Rather, a precise definition, such as by structure, formula, chemical name or physical properties, is required. Please reference, e.g., *Univ. of Rochester v. G.D. Searle & Co.*, 358 F.3d 916, 927, 69 USPQ2d 1886, 1894-95 (Fed. Cir. 2004).

While it is recognized that adequate written description of a limitation is not required to be stated *in haec verba* in the specification or claims as originally filed, adequate written support for claim limitations must arise from either an explicit or implicit suggestion by the disclosure to show that such a concept as claimed was actually in possession of Applicant at the time of the invention. For the reasons provided *supra*, Applicant has failed to provide the necessary teachings, by describing the claimed invention with all of its limitations using such descriptive means that fully set forth the claimed invention, in such a way as to reasonably convey to one skilled in the relevant art that Applicant had possession of the entire genus of agents that inhibit c-kit (claim 9).

Accordingly, claims 1-7 and 9-10 fail to meet the requirements of 35 U.S.C. 112, first paragraph, and are, thus, properly rejected.

Claim Rejections – 35 USC § 112, Second Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Present claim 1 is directed to a method for treating a mammal suffering from uveal melanoma comprising administering to said mammal in need of such a treatment, a dose, effective against said disease, of a compound I of the formula defined in the claim. Present claim 4 states that Compound I is in the form of the monomethanesulfonate salt.

In particular, there is insufficient antecedent basis for the limitation "said disease" in line 3 of claim 1, since the claim fails to set forth any reference to a "disease" *per se* in the preamble.

Furthermore, there is insufficient antecedent basis for the limitation "the monomethanesulfonate salt" in line 2 of claim 4, since any previous reference to "a monomethanesulfonate salt" is noticeably absent in the claim from which it depends (claim 1).

Instant claims 2-3 and 5-7 are properly included in this rejection because they fail to remedy the deficiencies of claims 1 or 4.

For these reasons, the claims fail to meet the tenor and express requirements of 35 U.S.C. 112, second paragraph, and are, thus, properly rejected.

Claims 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Present claims 9-10 provide for the use of a c-kit inhibitor or a pharmaceutically acceptable salt thereof for the preparation of a medicament for the treatment of uveal melanoma, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process Applicant

is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

For this reason, claims 9-10 fail to meet the tenor and express requirements of 35 U.S.C. 112, second paragraph, and are, thus, properly rejected.

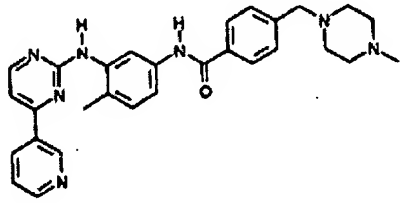
For the purposes of examination and the application of prior art, claims 9-10 will be interpreted to read upon a pharmaceutical composition of medicament for the treatment of uveal melanoma comprising a c-kit inhibitor.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmerman et al. (WO 99/03854; 1999).

Zimmerman et al. teaches the beta-crystal form of the methanesulfonic acid addition salt of 4-(4-methylpiperazin-1-ylmethyl)-N-[4-methyl-3-(4-pyrid-3-yl)pyrimidin-2-ylamino)phenyl]benzamide methanesulfonate of the formula  , an inhibitor of cellular processes involving tyrosine kinases, such as, e.g., c-kit receptor kinase (p.17, para.1), and pharmaceutical preparations thereof containing an effective amount of the compound in combination with a pharmaceutically acceptable carrier (p.17-18, bridging paragraph).

The limitation of present claims 9-10 directed to the use of the composition for the treatment of

uveal melanoma, in particular, metastasizing uveal melanoma, is an intended use of the composition, which does not impart any physical or material characteristic to the composition that is not already present in the prior art. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble of not considered a limitation and is of no significance to claim construction. See *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.2d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999). See also *Rowe v. Dror*, 112 F.3d 473, 378, 42 USPQ2d 1550, 1554 and MPEP §2112.02(II).

Claim Rejections - 35 USC § 103

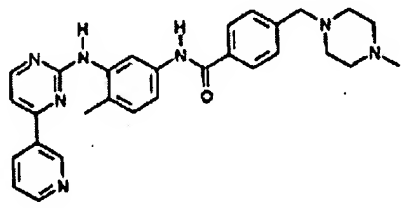
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al. (WO 99/03854; 1999) in light of Mouriaux et al. ("Implication of Stem Cell Factor in the Proliferation of Choroidal Melanocytes", *Exp. Eye Res.*, 2001; 73:151-157), cited to show a fact, in view of Ijland et al.

("Expression of Angiogenic and Immunosuppressive Factors by Uveal Melanoma Cell Lines", *Melanoma Research*, 1999; 9:445-450).

Zimmerman et al. teaches the beta-crystal form of the methanesulfonic acid addition salt of 4-(4-methylpiperazin-1-ylmethyl)-N-[4-methyl-3-(4-pyrid-3-yl)pyrimidin-2-ylamino)phenyl]benzamide methanesulfonate of the formula  , an inhibitor of cellular processes involving tyrosine kinases, such as, e.g., c-kit receptor kinase (p.17, para.1), and pharmaceutical preparations thereof containing an effective amount of the compound in combination with a pharmaceutically acceptable carrier (p.17-18, bridging paragraph). Zimmerman et al. further teaches methods for the inhibition of tyrosine kinases, such as, e.g., c-kit receptor kinase, and/or the treatment of warm-blood animals suffering from tumor diseases, wherein a quantity of the beta-crystal form of the methanesulfonic acid addition salt of the compound of the formula set forth *supra* effective against the disease concerned is administered to the warm-blooded animal in need of such treatment (p.17, para.1). Zimmerman et al. discloses that effective doses will depend upon the species, age, individual condition, and mode of administration employed, but teaches exemplary doses of about 1-2500 mg, preferably 1-1000 mg, especially 5-500 mg, per 70 kg bodyweight (p.17, para.1). An exemplary study of an oral dose of 50 mg/kg once daily of the disclosed compound was shown to inhibit the angiogenic effect of VEGF (p.16, para.2).

Ijland et al. teaches studies using six different human primary uveal melanoma cell lines (92-1, Mel-202, OCM-1, OCM-3, OCM-8 and EOM-3) and RNA isolation, reverse transcription-polymerase chain reaction (RT-PCR) and enzyme linked immunosorbent assay (ELISA) to determine levels of VEGF in each of the cell lines (p.446, col.1, para.3-p.447, col.2, para.1). Ijland et al. further teaches that each of the studied uveal melanoma cell lines demonstrated significant VEGF secretion, which was indicative of

angiogenic potency and vessel proliferation for neovascularization (p.448, col.2, para.5-p.449, col.1, para.2). Ijland et al. discloses that the inhibition of angiogenesis in uveal melanomas could be of great importance to augment conventional therapy (p.449, col.2, para.3).

One of ordinary skill in the art at the time of the invention would have found it *prima facie* obvious to use the methanesulfonate salt of 4-(4-methylpiperazin-1-ylmethyl)-N-[4-methyl-3-(4-pyrid-3-yl)pyrimidin-2-ylamino)phenyl]benzamide for the treatment of uveal melanoma with a reasonable expectation of success because Zimmerman et al. expressly teaches it as an antitumor agent with the ability to inhibit VEGF and Ijland et al. teaches the significant expression of VEGF in uveal melanoma cells for neovascularization and angiogenesis to encourage metastatic growth of the uveal tumor. Motivation to do so flows logically from the fact that a reduction in VEGF expression would, in turn, reduce the neovascularization and angiogenic process so as to retard proliferation and metastatic tumor growth.

Furthermore, regarding the expression of c-kit in the uveal melanoma cells (claim 3), Mouriaux et al. provides teachings that activation of c-kit by its ligand may contribute to the proliferation of choroidal melanocytes, such as those implicated in the pathogenesis of malignant melanoma of the eye (abstract and col.2, p.151, para.2). Accordingly, the skilled artisan would have reasonably expected that the uveal melanoma cells to be treated would have expressed c-kit because Mouriaux et al. clearly teaches the correlation of c-kit activation and proliferation of melanocytes of the eye that contribute to the formation of uveal tumors.

Regarding the instantly claimed dosage amounts (i.e., daily dose corresponding to 100-1000 mg of free base; claim 6) or dosing schedule (i.e., once daily for a period exceeding three months; claim 7), Zimmerman et al. expressly teaches that the effective doses will vary, depending upon a variety of factors, such as the species, age, individual condition, and mode of administration. Please see p.17, para.1.

It is obvious from the above teachings that Zimmerman et al. expressly contemplates variation in the dosage amounts and schedule of the active agents. The determination of the optimal dosage amounts and/or schedule of administration would have been a matter well within the skill of the artisan at the time of the invention and would not have required undue experimentation or have been outside the realm of knowledge generally available to the skilled artisan. Factors that would have been taken into consideration when making such a determination would have included, but not been limited to, the age, weight, sex, diet and medical condition of the patient, severity of the disease, route of administration, pharmacological considerations, e.g., activity, efficacy, pharmacokinetics and toxicology profiles of the particular compound employed, whether a drug delivery system is utilized and whether the compound is administered as part of a drug combination. Thus, the dosage regimen and/or schedule of administration that would have actually been employed would have been expected to vary widely and, in the absence of evidence to the contrary, would not have been inconsistent with that which is presently claimed.

In addition, the concentration of the active ingredient is a result-effective variable, i.e., a variable that achieves a recognized result, and, therefore, the determination of the optimum of workable dosage range would be well within the practice of routine experimentation by the skilled artisan, absent factual evidence to the contrary, and, further, absent any evidence demonstrating a patentable difference between the compositions used and the criticality of the amount(s).

Conclusion

The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. Please reference the publication to All-Ericsson et al. ("c-Kit-Dependent Growth of Uveal Melanoma Cells: A Potential Therapeutic Target?", *Invest. Ophthalmol. Vis. Sci.*, 2004; 45:2075-2082).

Rejection of claims 1-7 and 9-10 is proper.

No claims of the present application are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie A. Royds whose telephone number is (571)-272-6096. The examiner can normally be reached on Monday-Friday (9:00 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin H. Marschel can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Leslie A. Royds
Patent Examiner
Art Unit 1614

July 18, 2007

Frederick Krass
Primary Examiner
Art Unit 1614